

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern
California Edison Company (U 338-E) Regarding
the Future Disposition of the Mohave Generating
Station.

Application 02-05-046
(Filed May 17, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
APPROVING PROTECTIVE ORDER (NON-TRIBAL PARTIES)**

This ruling approves the text of a Protective Order designed for use during this proceeding to protect the confidential material produced in discovery by the various parties to the proceeding. The Protective Order, attached hereto as Appendix A, relates to all parties to this proceeding except the Hopi Tribe and the Navajo Nation (Tribes). Production of confidential material to the Tribes presents additional issues that I will resolve in a separate version of the Protective Order I approve here.

The final version of the Protective Order reflects negotiations among the parties to be bound, as well as the results of a Law and Motion hearing held before me on January 24, 2003. All parties to which the current Protective Order applies – *i.e.*, all parties except the Tribes – have approved the contents of the final version of the Protective Order. I have reviewed the Protective Order and find it reasonable for the purposes proposed by the parties.

Therefore, **IT IS RULED** that all parties to this proceeding, except the Hopi Tribe and the Navajo Nation, shall, if they wish to receive confidential material (as defined in the Protective Order) be bound by the Protective Order attached hereto as Appendix A and sign the Non-Disclosure Certificate accompanying the Protective Order.

Dated February 13, 2003, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Law and Motion
Administrative Law Judge

APPENDIX A
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA EDISON
COMPANY (U 338-E) Regarding the Future
Disposition of the Mohave Generating Station.

Application No. 02-05-046

PROTECTIVE ORDER

1. **Scope of Protective Order.** This Protective Order shall be available to all Participants in this proceeding and shall govern the use of all Confidential Material produced by Participants in this proceeding, except that any production, directly or indirectly, of any Confidential Material of the Hopi Tribe or Navajo Nation (collectively “the Tribes”), to Southern California Edison Company or Salt River Project Agricultural Improvement and Power District (collectively, “the Mohave Co-owners”), and any production, directly or indirectly, of any Confidential Material of the Mohave Co-owners to the Tribes, shall be governed by a separate protective order. This Protective Order is not applicable to the furnishing of information by any Participant to the California Public Utilities Commission (“Commission”) which is governed by California Public Utilities Code Section 583, nor shall it be construed in such a manner as to limit or restrict such furnishing of information.

2. **Definitions** – For purposes of this Protective Order:

(a) The term “Participant” shall mean a person or entity that has entered an appearance as a party in Application (“A.”) 02-05-046.

(b) The term “Producing Participant” shall mean the Participant that owns or possesses and has produced the Confidential Material at issue.

(c) The term “Requesting Participant” shall mean the Participant that has requested the Confidential Material at issue.

(d) The term “Recipient Participant” shall mean the Participant that has requested and received the Confidential Material at issue.

(e) The term “Designating Participant” shall mean the Participant that owns or possesses the Confidential Material at issue and designates the material as confidential.

(f) The term “Confidential Material” shall mean any portion of material deemed in good faith by a Participant to contain or represent a trade secret or other confidential research, development, or commercial information, provided, however, that the designation of material as “Confidential Material” shall be limited only to those portions that are legitimately confidential and shall not apply to the non-confidential portions. “Confidential Material” shall also include only those portions of any notes, memoranda, correspondence, electronic transmissions, and filings of any Reviewing Representative or Recipient Participant, and transcripts, Commission orders, and any other form of information, that copy or disclose any Confidential Material.

(g) The term “Reviewing Representative” shall mean a person who has signed and delivered to the Designating Participant in accordance with Section 3 a Non-Disclosure Certificate and who is:

(i) An attorney of record in this proceeding for a Participant, and such attorney’s support staff, including other attorneys, paralegals and office staff, that are actually assisting such attorney of record in connection with this proceeding, provided, however, that all such persons have access to Confidential Material only to the extent necessary to enable them to perform their duties relating to this proceeding;

(ii) An in-house attorney of any Participant, and that attorney’s support staff, including paralegals and office staff, that are actually assisting such attorney in connection with this proceeding, provided, however, that such attorney and employees have access to Confidential Material only to the extent necessary to enable them to perform their duties relating to this proceeding;

(iii) An official or employee of any Participant that is actually providing assistance to counsel for such Participant in this proceeding, or that has responsibilities for this proceeding, provided, however, that such officials and employees have access to Confidential Material only to the extent necessary to enable them to perform their duties and responsibilities relating to this proceeding;

(iv) An expert or consultant (or an employee thereof) retained by a Participant for the purpose of assisting the Participant’s attorney of record in this proceeding on the substantive aspects of this proceeding, including advising, preparing for or testifying in this proceeding, provided, however, that such experts, consultants and employees have access to Confidential Material only to the extent necessary to enable them to perform their duties relating to this proceeding;

(v) A consultant or vendor retained to assist counsel concerning non-substantive aspects of this proceeding, including document imaging, copying services, and preparation of graphic design illustration for use in this proceeding, provided, however, that such persons have access to Confidential Material only to the extent necessary to enable them to perform their duties relating to this proceeding;

(vi) A court reporter involved in reporting or transcribing depositions, hearings or other proceedings in this proceeding, provided that the reporter shall have access to Confidential Material only to the extent necessary for them to perform such reporting or transcription (notwithstanding the foregoing, it is understood that all Commission reporters are covered by Cal. P.U. Code Section 583 and are not subject to this Protective Order);

(vii) A person designated as a Reviewing Representative by order of the Assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge (collectively or individually, the “Presiding ALJ”), or the Commission.

(h) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto.

3. **Requirement to Execute and Deliver a Non-Disclosure Certificate; Right of Designating Participant to Object.** No person shall be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Confidential Material unless that person has first executed a Non-Disclosure Certificate, and a copy of such executed Non-Disclosure Certificate has been provided to and actually received by the Designating Participant at least five (5) business days before the first date on which such person shall gain any access to the Confidential Material (unless the Designating Participant and Requesting Participant agree to a different time period). If within such period the Designating Participant objects in writing to the designation of such person as a Reviewing Representative, then such person shall not be a Reviewing Representative and shall not be permitted any access to Confidential Material unless and until such person’s status as a Reviewing Representative has been established pursuant to the procedure described in Section 10.

4. **Term and Termination of Protective Order**

(a) Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until any order specifically modifying or terminating the Protective Order becomes no longer subject to judicial review. Notwithstanding any Recipient Participant’s withdrawal from this proceeding, either in whole or in part, any such Recipient Participant shall remain bound by the provisions of this Protective Order as long as the Protective Order remains in effect.

(b) Confidential Material shall remain available to Participants, subject to the provisions of this Protective Order, until the date that an order terminating this proceeding becomes no longer subject to judicial review.

5. **Disposition of Confidential Material Upon Termination of Proceeding.** After the date described in Section 4(b), and within forty-five (45) calendar days-after receiving a request from the Designating Participant, the Recipient Participant and Reviewing Representative shall return or destroy all Confidential Material received during this proceeding, and shall destroy any copies of filings, transcripts and exhibits in this proceeding that contain or disclose such Confidential Material, and any notes, memoranda, correspondence, e-mails or other documents containing or disclosing any such Confidential Material. Within such time period, each Recipient Participant

and Reviewing Representative shall also submit to the Designating Participant a declaration stating that, to the best of its knowledge, all Confidential Material and documents containing Confidential Material have been returned or destroyed.

6. **Identification of Confidential Material.** All Confidential Material shall be conspicuously marked with the following legend: “Confidential Pursuant to Protective Order in CPUC Proceeding No. A.02-05-046.” Inadvertent or unintended production or other disclosure of Confidential Material, regardless of whether or not it is marked in accordance with this Section 6, shall not by itself be deemed a waiver in whole or in part of a subsequent claim of confidentiality, either as to the specific documents or other information disclosed or as to any other documents or information.

7. **Custody of Confidential Material.** All Confidential Material shall be maintained by the Recipient Participant or Reviewing Representative in a secure place.

8. **Permissible Use of Confidential Material.**

(a) Confidential Material shall be treated as confidential by each Recipient Participant and Reviewing Representative in accordance with this Protective Order and the Non-Disclosure Certificate attached hereto. Confidential Material shall not be used except as necessary for the conduct of this proceeding, including any proceedings to enforce this Protective Order, or in pursuing other remedies for a violation of this Protective Order, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person’s duties in this proceeding.

(b) Reviewing Representatives may take notes of Confidential Material, which shall be treated as Confidential Material. Reviewing Representatives may make copies of Confidential Material if all copies are plainly marked as confidential, maintained in a secure manner, and disposed of pursuant to Section 5. Any such copies become Confidential Material.

(c) A Recipient Participant or Reviewing Representative may disclose Confidential Material, without violating this Protective Order, if and to the extent that it is legally compelled to do so, under a threat of sanction, by a court or regulatory agency of competent jurisdiction; provided however that such Recipient Participant or Reviewing Representative shall have first (i) notified the Producing Participant as soon as reasonably possible after receiving the request or demand for such Confidential Material, so that the Producing Participant could seek a protective order or other appropriate remedy, and (ii) provided such reasonable assistance and cooperation to the Producing Participant as requested by the Producing Participant in seeking to prevent the compelled disclosure of the Confidential Material. Such obligation to provide reasonable assistance and cooperation shall not obligate the Recipient Participant or Reviewing Representative to incur sanctions, penalties or legal fees.

9. Permissible Disclosure of Confidential Material Between Reviewing

Representatives. Any Reviewing Representative may disclose Confidential Material to any other Reviewing Representative according to the provisions of Section 3 and Section 8(a). In the event that any Reviewing Representative to whom Confidential Material is disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Sections 2(g) or 3, access to Confidential Material by the person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

Contents of the Confidential Material or any other form of information that discloses Confidential Material shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

10. Procedures for Seeking to Withhold Confidential Material. Nothing in this Protective Order shall be construed to prevent a Participant from seeking to further restrict the disclosure of Confidential Material, including, without limitation, seeking to withhold Confidential Material from specified Participants or Reviewing Representatives.

(a) If a Requesting Participant believes that the Designating Participant is not acting with reasonable diligence, the Requesting Participant may bring a motion requiring the Designating Participant to state whether it intends to withhold Confidential Material sought by a data request and, if so, to state why such relief is required.

(b) Any Participant seeking to withhold Confidential Material sought by a data request shall make itself available to meet and confer in good faith within five (5) business days of receiving a request from the Requesting Participant to meet and confer. A Designating Participant's stipulation with any particular Requesting Participant to withhold any portion of Confidential Material shall not be binding upon, or prejudice the scope of disclosure of subsequent requests for Confidential Material sought by, other Requesting Participants.

(c) If a Designating Participant seeks to withhold Confidential Material sought by a data request, the Requesting Participant may serve written notice on the Designating Participant that it contests such withholding. The Designating Participant shall, within ten (10) calendar days after receiving such notice, file a Motion for Authority to Withhold Confidential Material. Any Participant may file an opposition or response to such a motion within seven (7) calendar days. The Designating Participant may file a reply to any opposition or response within three (3) business days after the last day on which such opposition or response is due.

(d) Any Designating Participant seeking to withhold Confidential Material bears the burden of demonstrating, by a preponderance of the evidence, that the material at issue is Confidential Material and would, if disclosed or misused, lead to substantial

injury. Any Designating Participant seeking to completely withhold Confidential Material from a Requesting Participant bears the burden of demonstrating by a preponderance of the evidence why no relief short of such complete withholding of the Confidential Material -- including, but not limited to, the erection of screens or ethical walls -- would adequately protect the Designating Participant's legitimate interests.

(e) No Participant shall be deemed to have waived its right to seek additional administrative or judicial remedies, including but not limited to a stay, in response to a decision respecting a request to withhold Confidential Material, or the Commission's denial of an appeal or rehearing thereof.

(f) Nothing precludes a party from requesting the presiding ALJ or Commission to adopt a different procedure to resolve a given dispute upon good cause shown.

11. Procedures for Contesting Designation of Material as Confidential. Nothing in this Protective Order shall be construed to prevent a Participant from opposing the designation or continuing status of material as Confidential Material.

(a) A Participant opposing the designation or continuing status of material as Confidential Material shall serve a written objection on the Designating Participant specifying in writing the material whose designation is contested and stating the grounds for the objection. Within five (5) business days of the Designating Participant's receipt of an objection, the Designating Participant and the objecting Participant shall meet and confer in good faith. Thereafter, either the Designating Participant can withdraw the designation or the objecting Participant can file a motion for the Presiding ALJ or Commission to order the Designating Party to produce the information. If such a motion is filed, any Participant may file an opposition or response within seven (7) business days, and the moving Participant may file a reply to any opposition or response within three (3) business days after the last day on which such opposition or response is due.

(b) This Protective Order shall continue to apply to such material after the initial objection is made.

(c) No Participant shall be deemed to have waived its right to seek additional administrative or judicial remedies, including but not limited to a stay, after the Commission's or the Presiding ALJ's decision respecting Confidential Material or Reviewing Representatives, or the Commission's denial of an appeal or rehearing thereof.

12. Procedures for Filing Confidential Material. All copies of all documents reflecting Confidential Material that are filed with the Commission, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Confidential Material, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked as provided in Section 6 and shall be filed with the Commission under seal and served upon the Presiding ALJ.

If any Participant desires to include, utilize or refer to any Confidential Material in testimony or exhibits during the hearing in these proceedings, such Participant shall first notify both counsel for the Designating Participant and the Presiding ALJ of such desire, advising of its intent to include, utilize or refer to Confidential Material in its examination. Thereafter during the hearing, presentation of such Confidential Material will be governed by procedures determined by the Commission or the Presiding ALJ.

13. **Construction of Protective Order.**

(a) Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the production and use of Confidential Material on any legal grounds.

(b) Nothing in this Protective Order shall preclude any Participant from requesting the Presiding ALJ or the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Confidential Material pursuant to this Protective Order.

(c) Nothing in this Protective Order shall be construed to enlarge the rights of persons or entities not party to this Protective Order with respect to such persons' or entities' access to information pursuant to the Freedom of Information Act or any other statute, law, regulation or agreement.

14. **No Waiver of Privilege.** Nothing in this Protective Order shall be construed as preventing a party from withholding from production documents that are privileged or otherwise not subject to discovery under applicable law.

15. **No Waiver of Legal or Equitable Remedies for Actual or Anticipated Improper Disclosure.** A Participant does not waive the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Confidential Material in violation of this Protective Order.

16.

DATED this ____ day of _____, 2003.

Administrative Law Judge

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

Application of Southern California Edison)	
Company (U 388-E) Regarding the Future)	Application 02-05-046
Disposition of the Mohave Generating)	
<u>Station.</u>)	

NON-DISCLOSURE CERTIFICATE

(to be executed by a Reviewing Representative for access to Confidential Material)

I hereby certify my understanding that access to Confidential Material is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Confidential Material, including any notes, memoranda, correspondence, e-mails or any other form of information that copies or discloses Confidential Material, shall not be disclosed to any person or entity other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission ("Commission").

By:
Employer:
Title:
Representing:
Date:

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Approving Protective Order (Non-Tribal Parties) on all parties of record in this proceeding or their attorneys of record.

Dated February 13, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.